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ABSTRACT

This technical assistance bulletin explains extended school year (ESY) services for students with disabilities. It begins by discussing federal regulations that require schools to ensure that ESY services are available as necessary to provide free, appropriate public education to students with disabilities, that require ESY services to be provided only if a child's Individualized Education Program team determines that the services are necessary, and that schools do not limit ESY services to particular categories of disability or unilaterally limit the type, amount, or duration of those services. Information is then provided in the following areas: (1) eligibility for ESY services; (2) how a student is determined to be eligible; (3) how ESY decisions should be documented; (4) how least restrictive environment requirements should be addressed during ESY; (5) the requirements for ESY transportation; (6) the school's responsibility to provide ESY services even if the parents choose not to make their child available to receive such services; (7) district policies on ESY; (8) ESY services for preschool students transitioning from early intervention services; and (9) summer school attendance of students with disabilities. (CR)

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TECHNICAL ASSISTANCE BULLETIN

ISSUES IN EDUCATION
EXTENDED SCHOOL YEAR

SEPTEMBER 2001

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Technical Assistance Bulletin

September 2001

from the Missouri Department of Elementary and Secondary Education, Division of Special Education

Issues *in* EDUCATION

These bulletins address compliance issues

EXTENDED SCHOOL YEAR

The Individuals with Disabilities Education Act (IDEA) requires that each child with a disability receive a free, appropriate public education (FAPE). To meet this requirement, the child's Individualized Education Program (IEP) team must consider whether or not the child with a disability requires educational services beyond those offered during the regular school year. While Extended School Year (ESY) services are not required for every child with a disability, for those students whose IEP team has determined that ESY services are necessary, the public agency must ensure that those services are made available.

- Extended School Year services must be provided only if a child's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child.
- In implementing the requirements for ESY, a public agency may not:
  a) limit Extended School Year services to particular categories of disability, or
  b) unilaterally limit the type, amount, or duration of those services.

What do the regulations say?

Prior to the reauthorization of IDEA in 1997, the regulations did not specifically address ESY. The requirements for annual consideration of ESY by the IEP team and the provision of services to students for whom ESY services were determined necessary were founded in Office of Special Education Program (OSEP) policy memorandums and in case law. The final regulations, issued after the 1997 Reauthorization, do now specifically address ESY. According to comments in the regulations, this new section in the regulations a) codifies well-established case law, and b) ensures that all of the requirements for ESY are in one place in the regulations. The regulations at 34 C.F.R. Section 300.309 state the following:

- The term *Extended School Year* services means special education and related services are provided to a child with a disability:
  a) beyond the normal school year of the public agency,
  b) in accordance with the child's IEP,
  c) at no cost to the parents of the child,
  d) and meet the standards of the State Education Agency (SEA).

Each public agency shall ensure that Extended School Year services are available as necessary to provide FAPE.

When is a student determined eligible for ESY?

The consideration of eligibility for services must be done at the initial IEP and at least annually thereafter. The IEP of each child with a disability must document that the IEP team has considered the child's eligibility for ESY. The IEP must state whether the team has determined that the child:

a) is eligible for ESY,
b) is not eligible for ESY, ***or***
c) will be determined for eligibility at a later date.

If the team has determined that the student is eligible for ESY, but

is unable at that time to determine what specific services the child will receive during ESY, they must reconvene at a later date to determine services. If the team has decided that they will determine eligibility for ESY at a later date, again, they must reconvene to make that determination. While there are no specific guidelines regarding a time frame to which the team must adhere when making either of these determinations, the public agency must ensure that a determination of eligibility and a decision regarding any services to be provided during ESY be made prior to the end of the regular school year.

It is recommended that if there is insufficient data at the time of the initial IEP meeting to determine whether or not the child is eligible for ESY services, the team should specify a time frame and those methods that will be used to collect data to determine the appropriateness of ESY at a future IEP meeting.

How is a student determined eligible for ESY?

Students eligible for ESY are those students who require an extension of their educational program beyond the school year. The purpose of ESY services is not to provide the student with an opportunity to continue to progress toward existing annual goals or to initiate new goals. Extended School Year services are intended to prevent serious regression on existing goals.

Even though the regulations now include a section addressing requirements for ESY, case law is still used for guidance on what criteria an IEP team must use to determine a child's eligibility for ESY services. The seminal Extended School Year case in Missouri is *Yaris v. Special School District,* 558 F. Supp. 545 (E.D. Missouri 1983). In *Yaris,* the court held that the school year for special education students cannot arbitrarily be limited to 180 days. Because special education students require individualized programs, an Extended School Year may need to be part of an individual student's program. *Yaris* also recognized the importance of regression/recoupment considerations in determining whether a 180-day school year meets the individualized program needs of a specific student; however, subsequent case law established that ***documented*** regression/recoupment cannot be the sole determining factor for Extended School Year eligibility–***prediction*** of regression/recoupment must also be considered. In addition to documented and predicted regression/recoupment, case law from various jurisdictions has also suggested the following factors IEP teams could consider in making their determination of eligibility for ESY services:

a) the nature of the child's disability,

b) the severity of the disability,

c) the areas of learning crucial to the child's attainment of self-sufficiency and independence,

d) the child's progress, behavioral, and physical needs

e) any opportunities to practice skills outside the formal classroom setting (the more functional the skill, the more opportunities the child has to practice it),

f) the availability of alternative resources,

g) areas of the child's curriculum that need continuous attention,

h) the child's vocational needs,

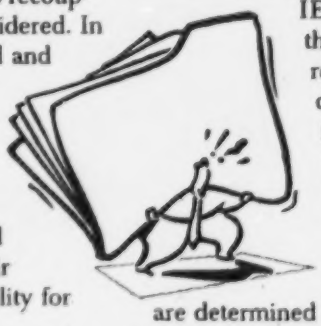
i) the ability of the child's parents to provide educational structure at home,

j) the opportunity for the child to interact with nondisabled peers.

As with all other programming needs, it is recommended that the need for ESY be documented via data gathered on the student's performance in relation to the IEP goals and objectives/benchmarks.

How should ESY decisions be documented?

The Compliance Section of the Division of Special Education has established criteria for documentation of ESY decisions. First, the IEP must document the team's decision regarding the student's eligibility for ESY–eligible, not eligible, or to be determined at a later date. Second, for those students who are determined eligible for ESY services, the IEP must document:



a) the goals to be addressed through ESY services,

b) the type and amount of special education and related services to be provided,

c) the frequency of the services,

d) the duration of the services,

e) the location of the services.

It is not required that a student's regular school year IEP be implemented in its entirety during the Extended School Year. The IEP team will decide what goals need to be addressed during ESY and what level of services are required.

How is Least Restrictive Environment (LRE) addressed during ESY?

Whereas all legal requirements that apply to educational programs during the regular school year apply to ESY programs (including provision of services in the LRE), districts are not required to maintain the full continuum of placement options during Extended School Year. For this reason, students in ESY programs may receive their services in a different environment than they do during the regular school year.

What are the requirements for ESY transportation?

The same requirements for transportation that exist during the regular school year apply to the Extended School Year. The IEP team must make a determination regarding whether or not transportation is a necessary related service for the ESY program and document this on the student's IEP. When considering transportation as a necessary related service for a student with a disability, the student's IEP team must look at the student's transportation needs in respect to both access and disability. Does the student need transportation to access their educational program? Does the student's disability require transportation in order to receive FAPE?

What if the child's parent/ guardian or the child, if he/she is 18 or older, does not want ESY services?

Eligibility for ESY services is determined by the IEP team, not the parent or student. The regulations at 34 C.F.R., Sec. 300.309 refer to ESY in the following way:

> "Each public agency shall ***ensure*** that Extended School Year services are available as necessary to provide FAPE."

Extended School Year is not an optional service; it is an extension of FAPE as provided in the IEP. If the IEP team determines that a student needs ESY services in order to achieve FAPE, the district must stand ready to provide those services even if the parent chooses not to make their child available to receive such services.

District policies on ESY

It is recommended that districts have ESY policies in place in order to avoid arbitrary decisions concerning the provision of ESY services for students with disabilities and to assist district personnel in determining the appropriateness of ESY for individual students. An ESY policy is ***required*** if a district wants to receive exceptional pupil aid for the students served during the Extended School Year period.

Preschool students transitioning from First Steps during the summer

Part B of IDEA requires that students transitioning from the state's early intervention system (Part C) have an IEP in place prior to their third birthday. In Missouri, the early intervention program (birth to age 3) for students with disabilities is First Steps. The Missouri State Plan contains a transition policy for children who are served in First Steps and whose third birthdays fall in April, May, or the summer months. The complete text of the policy can be found in Section IV.4 of the State Plan located at www.dese.state.mo.us/divspeced/stateplan.html.

Listed below are applicable parts of state policy regarding the consideration and provision of summer services for these children:

- Part B eligible children whose third birth dates are May through August may continue in the First Steps program until the initiation of their local district's school year in the fall.
- Eligible children whose third birth dates are April 1 through May 1 may either transition to Part B services before the end of the current school year or continue services in First Steps until the initiation of their local district's school year in August/ September. This discussion is part of the transition conference (held by the Part C system). For children who enroll in the local school district for the remainder of the school year, the IEP team must consider Extended School Year services and document the results of that consideration.

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Summer school attendance of students with disabilities

Many districts now provide for extended learning opportunities for all students through summer school programs. The following questions address specifically those students who are eligible for special education services, but have been determined not eligible for ESY services by the IEP team and are currently attending the district's regular summer school program.

Q: *If it has been determined that a student with an IEP is **not** eligible for ESY and that student attends the district's regular summer school program, is the district obligated to implement all or any part of the student's IEP in the summer school program?*

No. The district may ***choose*** to provide some special education services including accommodations, modifications, etc., to students with disabilities in the regular summer school program, but they are not required to do so. Any services provided on a voluntary basis by the district would ***not*** be addressed by the IEP team or documented on the student's IEP.

Q: *If a student with a disability who does not qualify for ESY services is attending the district's regular summer school program and receives accommodations/modifications to his/her general education classroom instruction during the regular school year, are the regular classroom teachers obligated to provide those same accommodations/modifications during summer school?*

This is a Section 504 issue. Just because the student does not qualify for ESY services does not mean that the student is not a student with a disability. Because the student did not qualify for ESY, IDEA does not apply to the student outside of the regular school year; however, the student is still covered under Section 504. (See "Student Access–Section 504 of the Rehabilitation Act of 1973" on the following web site: www.dese.state.mo.us/divspeced/SpecEdComp_Resources.html.)

Q: *If the district's summer school policy states that after two absences the student will not receive credit for their coursework, do students with disabilities have any recourse when they miss 3 days?*

Again, this is a Section 504 issue. IDEA does not address district attendance policies or the awarding of credit to students with disabilities. (See Issues in Education Technical Assistance Bulletin, *Grading, Awarding of Credit, and Graduation for Students with Disabilities,* January 1999, located at: www.dese.state.mo.us/divspeced/SpecEdComp_Resources.html.) The Office for Civil Rights (OCR) would be the appropriate agency to respond to this question.

Q: *If a district extends the year for students who score below district criteria in reading or math, and special education students are included in this criteria, are their IEPs implemented during this time?*

No, not under IDEA. However, this would again be a Section 504 issue. The district requirement mentioned above could pertain to provisions in HB 889 regarding remediation as a condition for promotion, or it could be a district policy initiated to improve student achievement on MAP scores to assist the district in meeting Missouri School Improvement Program (MSIP) accreditation standards. Either way, it is a Section 504, not an IDEA, issue. According to HB 889, a school district may adopt a policy that requires remediation as a condition for promotion, and students with disabilities may be included in this policy. If students with disabilities are included in this policy and are required to attend remedial programs, the IEP team ***does not*** need to address this in the student's IEP. If a district initiates such a policy and includes students with disabilities, it is suggested that the district have a method for parents of students with disabilities to seek and be considered for a waiver from this policy.

Q: *Do IDEA's discipline provisions apply to students attending summer school?*

No, not if the student has been determined ineligible for ESY and is attending the district's regular summer school program. There would be an exception here if the disciplinary incident during summer school resulted in days of suspension carrying over into the next regular school year. In this case, any days of the suspension that the student served during the next regular school year would apply toward the 10 days allowed for that year before it was considered a long-term suspension. For example, if the student was given a 30-day suspension during summer school and served 15 days during summer school and 15 days beginning with the first day of the next regular school year, the 15 days served at the beginning of the next regular school year would be considered a long-term suspension and would require that all of the IDEA provisions relating to a long-term suspension be implemented.